

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN SENATE JUNE 15, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1583

**Introduced by Assembly Member Roger Hernández
(Coauthor: Assembly Member Galgiani)**

February 2, 2012

An act to amend Sections 21606, 21608.5, 22750, 22753, and 22755 of, and to add Section 21609.7 to, the Business and Professions Code, relating to bulk merchandise pallets.

LEGISLATIVE COUNSEL'S DIGEST

AB 1583, as amended, Roger Hernández. Bulk merchandise pallets.

(1) Existing law authorizes junk dealers and recyclers, as defined, to sell and purchase junk, which includes secondhand and used furniture, pallets, or other personal property, as specified. *Existing law requires junk dealers and recyclers to obtain valid identification, as specified, from a seller before providing payment.* Existing law requires junk dealers and recyclers to maintain written records of specified information, and makes a violation of the recordkeeping requirements a misdemeanor.

This bill would permit a seller to use a passport from any country or a Matricula Consular issued by Mexico, along with another form or identification bearing an address, or an identification card issued by the United States, as identification for purposes of these provisions.

This bill would prohibit junk dealers and recyclers from purchasing or receiving bulk merchandise pallets, as defined, marked with an indicia

of ownership, as defined, from anyone except the indicated owner, unless specified information is provided to the junk dealer or recycler, and would require the junk dealer or recycler to maintain a written record of that information. The bill would also require that payment by the junk dealer for 5 or more bulk merchandise pallets to a person other than the indicated owner be made by check mailed to the address of the seller, as specified, or by check or *by* cash on or after the 3rd business day following the transaction.

(2) Existing law defines a merchandise pallet as a wooden or plastic carrier or container of specified size, used by a manufacturer or distributor to transport merchandise to retail outlets, which has a notice permanently affixed to it identifying the owner of the pallet and providing other specified information. Existing law prohibits and makes it a crime for an unauthorized person, as defined, to possess a merchandise pallet or for a person other than its owner to obliterate the identification notice on a pallet.

This bill would expand these provisions to cover merchandise pallets marked with indicia of ownership, as defined. The bill would also prohibit and make it a crime for a person other than the owner of the pallet to obliterate the indicia of ownership from a merchandise pallet.

(3) Existing law requires any person or entity purchasing plastic bulk merchandise containers who is in the business of recycling, shredding, or destruction of plastic bulk merchandise containers, as defined, to obtain a proof of ownership record and other identifying information from a person selling 5 or more containers, and to retain the required record for a specified time. A violation of these provisions is a misdemeanor.

This bill would instead require a person or entity purchasing or transporting plastic bulk merchandise containers who is in the business of recycling, shredding, or destruction of plastic bulk merchandise containers, or is in the business of transporting plastic bulk merchandise containers for those purposes, to obtain a proof of ownership record or bill of lading and other identifying information from the person selling or delivering 5 or more containers, and to retain the required record for a specified time.

Because this bill would expand the scope of a crime, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 21606 of the Business and Professions*
2 *Code is amended to read:*
3 21606. (a) Every junk dealer and every recycler shall set out
4 in the written record required by this article all of the following:
5 (1) The place and date of each sale or purchase of junk made
6 in the conduct of his or her business as a junk dealer or recycler.
7 (2) *One of the following methods of identification:* ~~The~~
8 (A) *The name, valid driver's license number and state of issue*
9 ~~or—California-issued California- or United States-issued~~
10 *identification card number, and vehicle license number including*
11 ~~the state of issue of any motor vehicle used in transporting the junk~~
12 ~~to the junk dealer's or recycler's place of business.~~
13 (B) *The name, identification number, and country of issue from*
14 *a passport used for identification and the address from an*
15 *additional item of identification that also bears the seller's name.*
16 (C) *The name and identification number from a Matricula*
17 *Consular used for identification and the address from an additional*
18 *item of identification that also bears the seller's name.*
19 (3) *The vehicle license number, including the state of issue, of*
20 *any motor vehicle used in transporting the junk to the junk dealer's*
21 *or recycler's place of business.*
22 ~~(3)~~
23 (4) *The name and address of each person to whom junk is sold*
24 *or disposed of, and the license number of any motor vehicle used*
25 *in transporting the junk from the junk dealer's or recycler's place*
26 *of business.*
27 ~~(4)~~
28 (5) *A description of the item or items of junk purchased or sold,*
29 *including the item type and quantity, and identification number,*
30 *if visible.*
31 ~~(5)~~

1 (6) A statement indicating either that the seller of the junk is
2 the owner of it, or the name of the person he or she obtained the
3 junk from, as shown on a signed transfer document.

4 (b) Any person who makes, or causes to be made, any false or
5 fictitious statement regarding any information required by this
6 section, is guilty of a misdemeanor.

7 (c) Every junk dealer and every recycler shall report the
8 information required in subdivision (a) to the chief of police or to
9 the sheriff in the same manner as described in Section 21628.

10 *SEC. 2. Section 21608.5 of the Business and Professions Code*
11 *is amended to read:*

12 21608.5. (a) A junk dealer or recycler in this state shall not
13 provide payment for nonferrous material unless, in addition to
14 meeting the written record requirements of Sections 21605 and
15 21606, all of the following requirements are met:

16 (1) The payment for the material is made by cash or check. The
17 check may be mailed to the seller at the address provided pursuant
18 to paragraph (3) or the cash or check may be collected by the seller
19 from the junk dealer or recycler on or after the third business day
20 after the date of sale.

21 (2) At the time of sale, the junk dealer or recycler obtains a clear
22 photograph or video of the seller.

23 (3) (A) Except as provided in subparagraph (B), the junk dealer
24 or recycler obtains a copy of the valid driver's license of the seller
25 containing a photograph and an address of the seller, ~~or~~, a copy of
26 a state or federal government-issued identification card containing
27 a photograph and an address of the seller, *a passport from any*
28 *other country in addition to another item of identification bearing*
29 *an address of the seller, or a Matricula Consular in addition to*
30 *another item of identification bearing an address of the seller.*

31 (B) If the seller prefers to have the check for the material mailed
32 to an alternative address, other than a post office box, the junk
33 dealer or recycler shall obtain a copy of a driver's license or
34 identification card described in subparagraph (A), and a gas or
35 electric utility bill addressed to the seller at that alternative address
36 with a payment due date no more than two months prior to the
37 date of sale. For purposes of this paragraph, "alternative address"
38 means an address that is different from the address appearing on
39 the seller's driver's license or identification card.

1 (4) The junk dealer or recycler obtains a clear photograph or
2 video of the nonferrous material being purchased.

3 (5) The junk dealer or recycler shall preserve the information
4 obtained pursuant to this subdivision for a period of two years after
5 the date of sale.

6 (6) (A) The junk dealer or recycler obtains a thumbprint of the
7 seller, as prescribed by the Department of Justice. The junk dealer
8 or recycler shall keep this thumbprint with the information obtained
9 under this subdivision and shall preserve the thumbprint in either
10 hardcopy or electronic format for a period of two years after the
11 date of sale.

12 (B) Inspection or seizure of the thumbprint shall only be
13 performed by a peace officer acting within the scope of his or her
14 authority in response to a criminal search warrant signed by a
15 magistrate and served on the junk dealer or recycler by the peace
16 officer. Probable cause for the issuance of that warrant must be
17 based upon a theft specifically involving the transaction for which
18 the thumbprint was given.

19 (b) Paragraph (1) of subdivision (a) shall not apply if, during
20 any three-month period commencing on or after the effective date
21 of this section, the junk dealer or recycler completes five or more
22 separate transactions per month, on five or more separate days per
23 month, with the seller and, in order for paragraph (1) of subdivision
24 (a) to continue to be inapplicable, the seller must continue to
25 complete five or more separate transactions per month with the
26 junk dealer or recycler.

27 (c) This section shall not apply if, on the date of sale, the junk
28 dealer or recycler has on file or receives all of the following
29 information:

30 (1) The name, physical business address, and business telephone
31 number of the seller's business.

32 (2) The business license number or tax identification number
33 of the seller's business.

34 (3) A copy of the valid driver's license of the person delivering
35 the nonferrous material on behalf of the seller to the junk dealer
36 or the recycler.

37 (d) This section shall not apply to the redemption of nonferrous
38 material having a value of not more than twenty dollars (\$20) in
39 a single transaction, when the primary purpose of the transaction
40 is the redemption of beverage containers under the California

1 Beverage Container Recycling and Litter Reduction Act, as set
2 forth in Division 12.1 (commencing with Section 14500) of the
3 Public Resources Code.

4 (e) This section shall not apply to coin dealers or to automobile
5 dismantlers, as defined in Section 220 of the Vehicle Code.

6 (f) For the purposes of this section, “nonferrous material” means
7 copper, copper alloys, stainless steel, or aluminum, but does not
8 include beverage containers, as defined in Section 14505 of the
9 Public Resources Code, that are subject to a redemption payment
10 pursuant to Section 14560 of the Public Resources Code.

11 (g) This section is intended to occupy the entire field of law
12 related to junk dealer or recycler transactions involving nonferrous
13 material. However, a city or county ordinance, or a city and county
14 ordinance, relating to the subject matter of this section is not in
15 conflict with this section if the ordinance is passed by a two-thirds
16 vote and it can be demonstrated by clear and convincing evidence
17 that the ordinance is both necessary and addresses a unique problem
18 within and specific to the jurisdiction of the ordinance that cannot
19 effectively be addressed under this section.

20 (h) This section shall become operative on December 1, 2008.

21 **SECTION 4.**

22 *SEC. 3.* Section 21609.7 is added to the Business and
23 Professions Code, to read:

24 21609.7. (a) Except as provided in subdivision (b), no junk
25 dealer or recycler may purchase or receive bulk merchandise pallets
26 marked with an indicia of ownership from any person or entity
27 other than the indicated owner. For purposes of this section,
28 “indicia of ownership” means words, symbols, or registered
29 trademarks printed, stamped, etched, attached, or otherwise
30 displayed on the exterior surface of the merchandise pallet that
31 reasonably identifies the owner.

32 (b) If the seller is not the indicated owner, a junk dealer or
33 recycler may purchase or receive bulk merchandise pallets only if
34 the seller or transferor provides a receipt from the indicated owner
35 verifying the seller’s current ownership or a document indicating
36 that the seller or transferor is authorized by the indicated owner
37 to sell or transfer the merchandise pallets. Copies of these
38 documents shall be maintained by the junk dealer or recycler as
39 part of the written record of the transaction.

(c) For a single transaction involving five or more bulk merchandise pallets marked with indicia of ownership where the seller is not the indicated owner, the junk dealer or recycler shall make payment only by a check mailed to the address shown on the driver's license or other government-issued photo identification provided by the seller or by cash or check collected by the seller on or after the third business day following the date of the transaction.

(d) For purposes of this section, "bulk merchandise pallets" means plastic or wood containers, carriers, or holders used by a manufacturer or distributor for bulk transport of merchandise to wholesale or retail outlets.

~~SEC. 2.~~

SEC. 4. Section 22750 of the Business and Professions Code is amended to read:

22750. For purposes of this chapter:

(a) "Bakery tray" or "bakery basket" is a plastic or metal container that holds bread or other baked goods and is used by a distributor, retailer, or an agent of the distributor or retailer as a means to transport, store, or carry those products, which has a notice permanently affixed to it that does all of the following: (1) identifies the company name of the owner of the item; (2) notifies the public that the unauthorized possession of the item is a violation of state law; and (3) lists an address or telephone number for returning the item to the owner.

(b) "Merchandise pallet" is a wooden or plastic carrier or container, used by a manufacturer or distributor for bulk transport of merchandise to wholesale or retail outlets marked with an indicia of ownership. For purposes of this chapter, "indicia of ownership" means words, symbols, or registered trademarks printed, stamped, etched, attached, or otherwise displayed on the exterior surface of the merchandise pallet that reasonably identify the owner.

~~SEC. 3.~~

SEC. 5. Section 22753 of the Business and Professions Code is amended to read:

22753. The following acts are punishable as provided in subdivision (b) of Section 489 or in Section 490 of the Penal Code as to any bakery tray, bakery basket, or merchandise pallet described in Section 22750:

1 (a) Possession of a bakery tray, bakery basket, or merchandise
2 pallet by an unauthorized person.

3 (b) Obliteration of the company owner's name on the bakery
4 tray or bakery basket, or obliteration of the indicia of ownership
5 on a merchandise pallet, except by the owner.

6 ~~SEC. 4.~~

7 *SEC. 6.* Section 22755 of the Business and Professions Code
8 is amended to read:

9 22755. (a) For purposes of this section, "plastic bulk
10 merchandise container" means a plastic crate or shell used by a
11 product producer, distributor, or retailer, or an agent of the product
12 producer, distributor, or retailer as a means for the bulk
13 transportation, storage, or carrying of retail containers of milk,
14 eggs, or bottled beverage products.

15 (b) Any person or entity purchasing or transporting plastic bulk
16 merchandise containers, who is in the business of recycling,
17 shredding, or destruction of, or in the business of transporting for
18 the purpose of recycling, shredding, or destruction of, plastic bulk
19 merchandise containers, shall obtain a proof of ownership record
20 or bill of lading from a person selling or delivering five or more
21 plastic bulk merchandise containers that shows that the person
22 selling or delivering the containers has lawful possession or
23 ownership of the containers, and shall also verify the seller's
24 identity by a driver's license or other government-issued photo
25 identification. The proof of ownership record shall include all of
26 the following information:

27 (1) The name, address, telephone number, and signature of the
28 seller or the seller's authorized representative.

29 (2) The name and address of the buyer or consignee if not sold.

30 (3) A description of the product including number of units.

31 (4) The date of transaction.

32 (c) The information required to be collected by this section shall
33 be kept for one year from the date of purchase or delivery,
34 whichever is later.

35 (d) Any person who violates the provisions of this section is
36 guilty of a misdemeanor.

37 ~~SEC. 5.~~

38 *SEC. 7.* No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

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